

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

CESAR E. AVENDANO MORALES,
Petitioner,

v.
JACK W. BENNETT, *et al.*,
Respondents.

Case No. 14-cv-120-BAS(KSC)

**ORDER DENYING PETITION AS
MOOT AND DISMISSING
ACTION**

On January 17, 2014, Petitioner Cesar E. Avendano Morales filed a Petition for Writ of Habeas Corpus under 28 U.S.C. § 2241, requesting that this Court release him from custody or order that he be afforded another bond hearing. At the time, Petitioner was detained by the Department of Homeland Security.

On April 29, 2015, the Court issued an order directing Respondents to file a short status report regarding the status of Petitioner's removal proceedings and related appeals. The order mailed to Petitioner was returned as undeliverable with a note that Petitioner was no longer at the facility that he identified in his contact information and that no forwarding address was available. (ECF No. 31.) Respondents filed a status

1 report informing the Court that, among other things, Petitioner was removed to
 2 Guatemala on January 30, 2015. (Status Report Ex. U.) Respondents submit a copy
 3 of the executed warrant of removal / deportation. (*Id.*)

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5 **I. ANALYSIS**

6 “Article III of the Constitution limits federal courts to the adjudication of actual,
 7 ongoing controversies between litigants.” *Deakins v. Monaghan*, 484 U.S. 193, 199
 8 (1988). “[F]ederal courts may not ‘give opinions upon moot questions or abstract
 9 propositions.’” *Calderon v. Moore*, 518 U.S. 149, 150 (1996) (per curiam) (quoting
 10 *Mills v. Green*, 159 U.S. 651, 653 (1895)). “This means that, throughout the litigation,
 11 the [petitioner] ‘must have suffered, or be threatened with, an actual injury traceable
 12 to the [respondent] and likely to be redressed by a favorable judicial decision.’”
 13 *Spencer v. Kemna*, 523 U.S. 1, 7 (1998) (citation omitted); *see also Murphy v. Hunt*,
 14 455 U.S. 478, 481 (1982) (per curiam) (“In general, a case becomes moot when the
 15 issues presented are no longer live or the parties lack a legally cognizable interest in
 16 the outcome.” (citations and internal quotation marks omitted)). Simply put, federal
 17 courts lack jurisdiction to consider moot questions. *See Spencer*, 523 U.S. at 7
 18 (“throughout the litigation, the plaintiff ‘must have suffered, or be threatened with, an
 19 actual injury traceable to the defendant and likely to be redressed by a favorable
 20 judicial decision’”) (citation omitted); *North Carolina v. Rice*, 404 U.S. 244, 246
 21 (1971) (per curiam) (federal courts do not have jurisdiction to consider moot claims).

22 “Deportation from the United States after filing a habeas petition does not
 23 necessarily moot a petitioner’s claim.” *Abdala v. INS*, 488 F.3d 1061, 1063 (9th Cir.
 24 2007). “For a habeas petition to continue to present a live controversy after the
 25 petitioner’s release or deportation, . . . there must be some remaining ‘collateral
 26 consequence’ that may be redressed by success on the petition.” *Id.* at 1064. If the
 27 habeas petition raises claims that were fully resolved by release from custody, then the
 28 petition becomes moot “because successful resolution of their pending claims could no

1 longer provide the requested relief.” *Id.* at 1065.

2 Here, Respondents confirm that Petitioner was removed to Guatemala on January
3 30, 2015. (Status Report Ex. U.) Consequently, the claims asserted in the petition are
4 now moot. Because he is no longer in immigration custody and the petition only
5 challenges Petitioner’s immediate custody, there is no relief that the Court can give to
6 Petitioner. *See Abdala*, 488 F.3d at 1064-65; *see also Hose v. INS*, 180 F.3d 992, 995
7 (9th Cir. 1999) (en banc); *Ferry v. Gonzalez*, 457 F.3d 1117, 1132 (10th Cir. 2006).

8 Petitioner has not otherwise asserted any collateral consequences of his federal
9 custody or removal that his petition can redress. *See Abdala*, 488 F.3d at 1064-65. The
10 petition is also not reviewable under the exception to mootness for cases that are
11 “capable of repetition, yet evading review.” *See Murphy*, 455 U.S. at 482.
12 Accordingly, the instant petition became moot when Petitioner was removed from the
13 United States and was released from immigration custody. As such, the petition is
14 subject to dismissal without prejudice for lack of jurisdiction. *See Spencer*, 523 U.S.
15 at 7.

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17 **II. CONCLUSION & ORDER**

18 In light of the foregoing, the Court **DENIES AS MOOT** the petition and
19 **DISMISSES WITHOUT PREJUDICE** this action.

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IT IS SO ORDERED.

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22 **DATED: June 8, 2015**

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Hon. Cynthia Bashant
United States District Judge

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